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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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11 **IN RE: INCRETIN-BASED**
12 **THERAPIES PRODUCTS LIABILITY**
13 **LITIGATION**

14 *As to All Member Cases*

Case No. 13-md-2452-AJB-MDD

[PROPOSED] CASE
MANAGEMENT ORDER NO. __

SUPPLEMENTAL ORDER
REGARDING MASTER
CONSOLIDATED ANSWERS
AND SERVICE OF PROCESS

Judge: Hon. Anthony J. Battaglia
Magistrate: Hon. Mitchell D. Dembin

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20 On December 2, 2013, this Court issued an Order Governing Filing of Master
21 Consolidated Complaint, Short Form Complaint, and Master Consolidated Answer(s),
22 which established procedures for the filing of a Master Consolidated Complaint, a
23 form Short Form Complaint, and Master Consolidated Answers. At that time, the
24 Plaintiffs filed and the Court approved a Master Consolidated Complaint and Short
25 Form Complaint. The Defendants – Amylin Pharmaceuticals, LLC (“Amylin”), Eli
26 Lilly and Company (“Lilly”), Merck Sharp & Dohme Corp. (“Merck”) and Novo
27 Nordisk Inc. (“Novo”) – were instructed to file Master Consolidated Answers by
28 December 31, 2013. On or before December 31, 2013, each of the aforementioned

1 Defendants filed a Master Answer. This Order sets out further instruction and
2 procedures regarding the adoption and use of those Master Answers and service of
3 Complaints.

4 **I. ADOPTION OF MASTER ANSWERS.**

5 The Court finds that each of the Master Answers is suitable for adoption and
6 incorporation by reference in response to lawsuits filed by plaintiffs whose pancreatic
7 cancer claims are filed in, transferred to, or removed to this Court and made part of
8 MDL No. 2452.

9 Each Master Answer filed by Defendants Amylin, Lilly, Merck or Novo is, by
10 this Order, deemed to be adopted in every case that is filed in, transferred to, or
11 removed to this Court and made part of MDL No. 2452 which names that Defendant
12 as a party. No further action on the part of Defendants Amylin, Lilly, Merck or Novo
13 is required in order for their respective Master Answers to become operative.

14 **II. APPLICATION OF MASTER ANSWERS.**

15 The Master Answers filed by Defendants Amylin, Lilly, Merck and Novo are,
16 by this Order, deemed the Answer to all properly served complaints, whether Short
17 Form or otherwise, in any case now pending and in cases subsequently transferred
18 pursuant to 28 U.S.C. § 1407, or filed directly in this Court and treated as part of this
19 proceeding. Amylin, Lilly, Merck and Novo are relieved of the obligation to file any
20 further Answer to any complaint not yet answered and/or any complaint in a case
21 subsequently transferred to or consolidated with MDL No. 2452 unless otherwise
22 ordered by this Court. For cases that do not utilize the Master Consolidated
23 Complaint, the Defendants' Master Answers will be deemed the answer to those
24 allegations in such complaints that correspond to the allegations of the Master
25 Consolidated Complaint, and will be deemed a denial of any allegations not contained
26 in the Master Consolidated Complaint.

27 The adoption of the Master Answers in every case is without prejudice to any
28 Defendant later moving to dismiss, asserting any affirmative defenses, or otherwise

1 challenging the sufficiency of any claim or cause of action in any complaint under the
2 applicable state's law, including any basis permissible under the Federal Rules of
3 Civil Procedure, and from filing and amended Answer to specifically address any
4 individual complaints described below.

5 **III. SERVICE OF PROCESS.**

6 The process for the acceptance of service in this Order relates solely to Amylin,
7 Lilly, Merck and Novo and no other defendant(s), and nothing herein is intended to
8 modify the requirements of the Federal Rules of Civil Procedure with regard to
9 effecting service on any other defendant(s). It specifically does not apply to any
10 corporate affiliate or partner of Amylin, Lilly, Merck or Novo.

11 Provided that the Complaint is among those authorized to be included in this
12 MDL proceeding, including that the injuries alleged in a Complaint are among those
13 approved by the Judicial Panel on Multidistrict Litigation for inclusion in this MDL,
14 each of Amylin, Lilly, Merck and Novo agrees, without waiver of any defenses, to
15 accept service of process pursuant to the provisions of Fed. R. Civ. P. 4(d) solely on
16 its own behalf in all Incretin-Based Therapies pancreatic cancer cases in which it is
17 named that are transferred to, removed to, or filed directly in this MDL pursuant to
18 this Court's order establishing direct filing procedures. For such cases transferred to,
19 removed to, or filed directly into the MDL Proceedings pursuant to the Court's direct
20 filing Order, the Complaint and notice required under Rule 4(d) shall be provided to
21 Amylin, Lilly, Merck and/or Novo by e-mailing the documents to each applicable
22 defendant in that Complaint as follows:

23 a. As to Amylin Pharmaceuticals, LLC:

24 Amylin_Service_Incretin_MDL@omm.com

25 b. As to Eli Lilly and Company:

26 byettamdlservice@pepperlaw.com

27 c. As to Merck Sharp & Dohme Corp.:

28 JanuviaJanumetMDLComplaintService@wc.com

1 d. As to Novo Nordisk Inc.:

2 VictozaMDLComplaintService@dlapiper.com

3 General mailing to Eli Lilly & Company, Amylin Pharmaceuticals, LLC, Merck
4 Sharp & Dohme Corp. and or Novo Nordisk Inc., emailing to counsel for those
5 defendants (except as provided above), or use of other methods of transmission (e.g.,
6 Federal Express or DHL) to those defendants or their counsel will not be sufficient to
7 effect service.

8 This Order does not prevent any plaintiff from effecting service pursuant to any
9 other method authorized under the Federal Rules of Civil Procedure.

10 Upon receipt of a Complaint served in accordance with this Order, and provided
11 that plaintiff is a resident of the United States and has named the correct defendant
12 entity or entities, the Defendants served shall execute a Waiver of Service of
13 Summons, a form of which is attached hereto as Exhibit A, and file the waiver on the
14 record by Electronic Case Filing.

15 A plaintiff who filed or files his/her complaint directly into the MDL
16 Proceedings pursuant to the terms of this Order and effects service pursuant to the
17 Service of Process section of this Order is not required to file a return of service with
18 the Court.

19 **IV. AMENDMENT OF PLEADINGS PRIOR TO TRANSFER FOR TRIAL.**

20 In light of these Master Complaint/Master Answer procedures, the Court
21 anticipates that amendments to complaints and answers may be required for cases
22 considered for bellwether trials in this MDL proceeding and/or before cases are
23 remanded to transferor courts, or for other good cause. The parties will meet and
24 confer as to those issues, which may be addressed by further Order of this Court at the
25 appropriate time.

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IT IS SO ORDERED.

DATED: _____

Honorable Anthony J. Battaglia
United States District Judge

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EXHIBIT A

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In accordance with the Court's referenced above, the undersigned defendant's Answer to the Consolidated Master Form Complaint automatically serves as the Answer in this action, and no further Answer is required.

Date: _____

WILSON TURNER KOSMO LLP

Vickie E. Turner (SBN 106431)
550 West C Street, Suite 1050
San Diego, California 92101
Telephone: (619) 236-9600
Facsimile: (619) 236-9669
E-mail: vturner@wilsonturnerkosmo.com

WILLIAMS & CONNOLLY LLP

Douglas R. Marvin
Eva Petko Esber
Paul E. Boehm
M. Elaine Horn
Jonathan L. Williams
725 Twelfth Street, N.W.
Washington, D.C. 20005-5901
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
E-mail: dmarvin@wc.com
E-mail: eesber@wc.com
E-mail: pboehm@wc.com
E-mail: ehorn@wc.com
E-mail: jonathanwilliams@wc.com

ATTORNEYS FOR DEFENDANT
MERCK SHARP & DOHME CORP.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In re: INCRETIN-BASED THERAPIES
PRODUCTS LIABILITY LITIGATION

Case No. 13-md-2452-AJB-MDD

CERTIFICATE OF SERVICE

Judge: Hon. Anthony J. Battaglia
Magistrate: Hon. Mitchell D. Dembin

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2 **CERTIFICATE OF SERVICE**
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4 I HEREBY CERTIFY that on the January 17, 2014, a true and correct copy of
5 the documents listed below have been E-filed with the Court and served on all counsel
6 of record listed on CM/ECF.

- 7 • **JOINT MOTION FOR ENTRY OF SUPPLEMENTAL ORDER**
8 **REGARDING MASTER CONSOLIDATED ANSWERS AND**
9 **SERVICE OF PROCESS; and**
10 • **PROPOSED CASE MANAGEMENT ORDER NO. __**
11

12 I declare that I am employed by the office of a member of the bar of this court
13 at whose direction the service was made. Executed January 17, 2014, at San Diego,
14 California.

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16 Tara D. Thurston
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